



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

NOV 25 1992

Waste Management
of Wisconsin, Inc.
c/o Ms. Lisa S. Seglin
Environmental Counsel
3003 Butterfield Road
Oak Brook, IL 60521

REPLY TO THE ATTENTION OF:

RE: Hagen Farm Superfund Site,
Groundwater Control Operable Unit
Unilateral Administrative Order
Remedial Design/Remedial Action

Dear Ms. Seglin:

Enclosed please find a Unilateral Administrative Order issued by the U.S. Environmental Protection Agency under Section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (CERCLA), 42 U.S.C. § 9601, et seq.

Please note that the order allows an opportunity for a conference if requested within ten (10) calendar days after issuance of the Order; and specifies a date and location for the conference, if requested.

If you have any questions regarding the Order, feel free to contact Jeff Cahn, Office of Regional Counsel, at (312) 886-6670.

Sincerely yours,

William E. Muno. Acting Director
Waste Management Division

Enclosure

cc: Paul Kozol
Wisconsin Department of Natural Resources

Printed on Recycled Paper

bcc: Jim Mayka
Mary Pat Tyson
Jeffrey A. Cahn, ORC
Steven Padovani
Sue Pastor, Public Affairs
Ernie Watkins, Office of Waste Programs Enforcement

CERTIFICATE OF SERVICE

I, Jeffrey A. Cahn, hereby certify that I caused copies of the accompanying "Unilateral Administrative Order" entered in Docket No. V-W-92-C-172 to be served via United States Mail, First Class and certified - return receipt requested, postage prepaid, on this 30 day of November, 1992, upon the following:

Ms. Lisa Seglin
Environmental Counsel
Waste Management of Wisconsin, Inc.
3003 Butterfield Road
Oak Brook, Illinois
60521

Jeffrey A. Cahn
Assistant Regional Counsel
Office of the Regional Counsel
United States Environmental
Protection Agency, Region V
77 West Jackson Blvd.
Chicago, Illinois 60604

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

IN MATTER OF:

HAGEN FARM SUPERFUND SITE
DANE COUNTY, WISCONSIN

RESPONDENT:

WASTE MANAGEMENT OF WISCONSIN,
INCORPORATED.

)
) ADMINISTRATIVE ORDER
) PURSUANT TO SECTION 106
) OF THE COMPREHENSIVE
) ENVIRONMENTAL RESPONSE,
) COMPENSATION, AND
) LIABILITY ACT OF 1980,
) AS AMENDED
)
)
)

V-W-92-G-172

ADMINISTRATIVE ORDER
FOR REMEDIAL DESIGN AND REMEDIAL ACTION

I. INTRODUCTION AND JURISDICTION

1. This Order directs Respondent to perform a remedial design for the remedy described in the Record of Decision for the Hagen Farm site, operable unit No. 2, dated September 30, 1992, and to implement the design by performing a remedial action. The Record of Decision for operable unit No. 2, dated September 30, 1992, is the final Record of Decision for the Hagen Farm site. This Order is issued to Respondent by the United States Environmental Protection Agency ("EPA") under the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9606(a). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580 (52 Fed. Reg. 2926), and was further delegated to the Regional Administrator on September 13, 1987 by EPA Delegation No. 14-14 and 14-14A, and to the Director, Waste Management Division, Region V, by delegation 14-14B.

II. PARTIES BOUND

2. This Order shall apply to and be binding upon the Respondent identified in paragraph 9 and its successors and assigns. The Respondent is jointly and severally responsible for carrying out all activities required by this Order. No change in the ownership, corporate status, or other control of the Respondent shall alter any of the Respondent's responsibilities under this Order.

3. The Respondent shall provide a copy of this Order to any prospective owners or successors before a controlling interest in Respondent's assets, property rights, or stock are transferred to the prospective owner or successor. Respondent shall provide a copy of this Order to each contractor, sub-contractor, laboratory, or consultant retained to perform any Work under this Order, within five days after the Effective Date of this Order or on the date such services are retained, whichever is later. Respondent shall also provide a copy of this Order to any person acting on behalf of Respondent with respect to the Site or the Work and shall ensure that all contracts and subcontracts entered into hereunder require performance under the contract to be in conformity with the terms and Work required by this Order. With regard to the activities undertaken pursuant to this Order, each contractor and subcontractor shall be deemed to be related by contract to the Respondent within the meaning of Section

107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3). Notwithstanding the terms of any contract, the Respondent is responsible for compliance with this Order and for ensuring that its contractors, subcontractors, and agents perform all Work in accordance with this Order.

4. Not later than thirty (30) days prior to any transfer of any interest in any real property included within the Site, Respondent shall submit a true and correct copy of the transfer documents to EPA, and shall identify the transferee by name, principal business address and effective date of the transfer.

III. DEFINITIONS

5. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or its implementing regulations. Whenever terms listed below are used in this Order or in the documents attached to this Order or incorporated by reference into this Order, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.

b. "Day" shall mean a calendar day unless expressly stated to be a working day. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the end of the next working day.

c. "EPA" shall mean the United States Environmental Protection Agency.

d. "WDNR" shall mean the Wisconsin Department of Natural Resources.

e. "National Contingency Plan" or "NCP" shall mean the National Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

f. "Paragraph" shall mean a portion of this Order identified by an Arabic numeral.

g. "Performance Standards" shall mean those cleanup standards, standards of control, and other substantive requirements, criteria or limitations, identified in the Record of Decision and Statement of Work, that the Remedial Action and Work required by this Order must attain and maintain.

h. "Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Site, Operable Unit No. 2, signed on September 30, 1992, by the Regional Administrator, EPA Region V, and all attachments thereto, which is attached hereto and made a part hereof as Attachment 1.

i. "Statement of Work" or "SOW" shall mean the statement of work for implementation of the Remedial Design, Remedial Action, and Operation and Maintenance at the Site, as set forth in Attachment 2 to this Order. The Statement of Work is incorporated into this Order and is an enforceable part of this Order.

j. "Section" shall mean a portion of this Order identified by a Roman numeral and includes one or more paragraphs.

k. "Section 106 Administrative Record" shall mean the Administrative Record which includes all documents considered or relied upon by EPA in preparation of this Order. The Section 106 Administrative Record Index is a listing of all documents included in the Section 106 Administrative Record, and is attached hereto as Appendix 1.

l. "Site" shall mean the Hagen Farm Superfund Site, encompassing approximately 28 acres, located at 2318 County Highway A, approximately one mile east of the City of Stoughton

in Dane County, Wisconsin, as described in the Record of Decision, and includes, but is not limited to, all property which has been contaminated as a result of a release from the Facility.

m. "State" shall mean the State of Wisconsin.

n. "United States" shall mean the United States of America.

o. "Work" shall mean all activities Respondent is required to perform under this Order to implement the ROD for Operable Unit No. 2, including Remedial Design, Remedial Action and Operation and Maintenance for Operable Unit No. 2 and any other related activities required to be undertaken pursuant to this Order.

IV. DETERMINATIONS

6. The Hagen Farm Site is located at 2318 County Highway A, Dane County, Wisconsin. The Hagen Farm Site consists of a total of approximately 28 acres in an area of rural surrounding that is dominated largely by sand and gravel mining and agriculture. Soil and gravel mining operations are located northwest, northeast and south of the landfill site. The Stoughton Airfield is located adjacent to the northwest corner of the landfill site. County Highway "A" passes just south of the landfill site. The

landfill site was operated as a sand and gravel pit prior to the late 1950s. The gravel pit then was used for disposal of waste material from the late 1950s to the mid-1960s. The landfill operator accepted municipal wastes, waste solvents, and other various organic materials including acetone, butyl acetate, 1-2-dichloroethylene, tetrahydrofuran, solid vinyl, sludge material containing methylethyl ketone and xylenes, and toluene. In a 103(c) notification submitted to the U.S. EPA by Uniroyal, Inc., in June 1981, Uniroyal indicated that F003 and F005 wastes, which are hazardous wastes within the meaning of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6901, also were disposed of at the landfill.

7. During the period that the landfill was operated as a disposal facility, the property was owned by Nora Sundby, who is now deceased. The landfill was operated by City Disposal Corporation ("City Disposal"), a predecessor corporation of Respondent, Waste Management of Wisconsin, Inc. ("WMWI"). City Disposal also was the transporter of much of the waste that was disposed of at the landfill. On November 30, 1977, the landfill site property was conveyed by the estate of Ms. Sundby to Orrin N. and Ida Mae Hagen.

8. Beginning in November 1980, in response to complaints received from local residents, the WDNR began conducting groundwater sampling at nearby private water supply wells.

Sampling of the on-Site monitoring wells during the period 1980-1986 indicated certain organic compounds were present in the groundwater, including benzene, ethylbenzene, tetrahydrofuran, xylenes, and toluene. In addition, nearby private water supplies on adjacent properties have also shown detectable levels of volatile organic compounds (VOCs). The private wells located on the Site had been impacted by acetone, tetrahydrofuran, vinyl chloride, xylene, trans 1,2-dichloroethene, and trichloroethylene.

9. On February 24, 1987, Orrin Hagen conveyed ownership of the landfill site property to Respondent. Respondent, Waste Management of Wisconsin, Inc., is now, and has been since on or about February 27, 1987, the owner of the landfill site property.

10. On February 23, 1987, U.S. EPA, pursuant to Section 122 of CERCLA, 42 U.S.C. § 9622, notified Waste Management of Wisconsin, Inc., that it had determined that it was a potentially responsible party for the release or threatened release of hazardous substances at the Hagen Farm Site. WMWI was offered the opportunity to conduct a Remedial Investigation and Feasibility Study ("RI/FS").

11. On July 22, 1987, (52 Fed. Reg. 27620), pursuant to section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Hagen Farm Site

on the National Priorities List ("NPL"), set forth at 40 C.F.R. Part 300, Appendix B.

12. Subsequently, WMWI and Uniroyal, Inc., entered into an Administrative Order by Consent (U.S. EPA Docket No. VW 87-C-016, dated September 14, 1987) (the "Consent Order") with the U.S. EPA and the WDNR. In the Consent Order, WMWI and Uniroyal agreed to conduct the RI/FS at the Site. Accordingly, in July of 1988, upon U.S. EPA approval, in consultation with the WDNR, of the required Work Plans, fieldwork at the Site commenced.

13. Two operable units, which are being conducted concurrently, have been defined for the Site. Operable Unit No. 1, which is the Source Control Operable Unit ("SCOU"), addresses waste refuse and sub-surface soils ("Waste/sub-Soils") at disposal area A and two smaller disposal areas, areas B and C, which are all located within the landfill site property. Operable Unit No. 2, which is the Groundwater Control Operable Unit ("GCOU"), addresses the contaminated groundwater at the Site. The Operable Unit approach was agreed upon after discussions among U.S. EPA, WDNR, and the PRPs during the early phase of the implementation of the Work Plan for the RI. This Order addresses Operable Unit No. 2.

14. The Technical Memorandum for the SCOU was completed in early 1989. The RI for the GCOU was initiated in July 1989 and the final RI for GCOU was submitted to U.S. EPA in November 1991.

15. In June of 1990, U.S. EPA provided the FS and the Proposed Plan for the SCOU remedial action to the public. An opportunity for public comments was provided. Comments were to be submitted in writing to the U.S. EPA by August 10, 1990, or orally at the public meeting held in Stoughton, Wisconsin on August 2, 1990. The Respondent was allowed to submit comments on the Proposed Plan for the SCOU during this public comment period.

16. Considering the Proposed Plan for SCOU remedial action and the public comments received, U.S. EPA, with concurrence by the State, selected a source control remedy for remediation of on-site waste and sub-surface soils the Facility. U.S. EPA's decision for Operable Unit No. 1 is summarized in the Record of Decision signed by the U.S. EPA Administrator, Region V, on September 17, 1990. An Explanation of Significant Differences ("ESD") relating to the selected remedy for Operable Unit No. 1 was issued by U.S. EPA in April of 1991. The SCOU ROD and the SCOU ESD are attached as Appendix 2.

17. On October 31, 1990, U.S. EPA issued Special Notice, pursuant to Section 122(e)(1) of CERCLA, to WMWI and Uniroyal, Inc. The purpose of issuance of Special Notice was to initiate a period for negotiating an agreement with U.S. EPA for the cleanup of the Hagen Farm Site. At the outset of the initial negotiation session, WMWI (and Uniroyal, Inc.) unequivocally refused to enter into a civil Consent Decree to settle issues relating to the

Hagen Farm Site, but stated that they would perform cleanup activities pursuant to the terms of a unilateral Administrative Order. Accordingly, on March 7, 1991, U.S. EPA issued a unilateral Administrative Order, pursuant to Section 106 of CERCLA, ordering WMWI and Uniroyal, Inc., to undertake SCOU cleanup activities at the Hagen Farm Site.

18. Pursuant to the terms of the ROD and ESD for Operable Unit No. 1, and the March 7, 1991, Administrative Order, sub-areas B and C were consolidated into the disposal area A and the construction of the Landfill Cover over the main disposal area A, which is one of the components of the selected remedy for Operable Unit No. 1, was completed in May 1992. The implementation of In-Situ Vapor Extraction, which is also part of the selected remedy for Operable Unit No. 1, was initiated in May 1992.

19. The RI for the GCOU was initiated by WMWI in July 1989 and the final RI report was submitted in November 1991. An Alternatives Array was prepared in July 1991, which provided a preliminary description of the technical methods under consideration for cleaning up the groundwater. Based on the evaluation and screening of technical methods available for addressing the groundwater contamination in the Alternatives Array, a draft Feasibility Study ("FS") report was submitted in October 1991. The draft FS was revised in order to include off-

property contaminated groundwater in January 1992, and finalized in April 1992. The FS Report for Operable Unit No. 2 outlined the final alternatives under consideration for correcting contamination problems found in the groundwater, and provided a thorough evaluation of each alternative.

20. Pursuant to section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action in May of 1992, and provided opportunity for public comment on the proposed remedial action. Similarly, Respondent was given an opportunity to comment on the proposed plan for remedial action and to supplement the Administrative Record regarding a decision for selection of the final plan for remedial action.

21. The decision by EPA on the remedial action to be implemented at the Hagen Farm Site, Operable Unit No. 2, is embodied in a Record of Decision ("ROD"), executed on September 30, 1992, on which the State has given its concurrence. Operable Unit No. 2 (the Groundwater Control Operable Unit), addresses the contaminated on- and off-property groundwater at the Site. The ROD defines "on-property groundwater" as contaminated groundwater on and in the immediate vicinity of the main waste disposal area and "off-property groundwater" as contaminated groundwater at any location within the plume other than in the area defined as on-property groundwater. The ROD is an enforceable part of this

Order and is attached hereto as Attachment 1. The ROD is supported by an Administrative Record which contains the documents and information upon which EPA based the selection of the response action. The U.S. EPA's selected response action set out in the ROD has been determined to provide adequate protection of public health, welfare and the environment; meet all Federal and State environmental laws; and be cost effective. The Operable Unit No. 2 ROD, together with the Operable Unit No. 1 ROD, constitutes the final remedy for the Hagen Farm Site.

22. Groundwater contamination at the Hagen Farm Site poses a current and potential future threat to public health and the environment by chemicals in the groundwater originating at, or migrating from the Facility. Groundwater contamination is the result of on-Site waste disposal. Wastes disposed of at the Facility included waste solvents and other various organic materials including acetone, butyl acetate, 1-2-dichloroethylene, tetrahydrofuran, solid vinyl, sludge material containing methyl ethyl ketone and xylenes, and toluene. Contamination from the wastes disposed of at the Facility subsequently migrated into the groundwater.

23. Sampling of the on-Site monitoring wells during the period 1980-1986 indicated certain organic compounds are present in the groundwater, including benzene, ethylbenzene, tetrahydrofuran ("THF"), xylenes, and toluene. In addition, nearby private water

supplies on adjacent properties also contained detectable levels of volatile organic compounds ("VOCs"). The private wells located on adjacent properties had been impacted by acetone, THF, vinyl chloride, xylene, trans-1,2-dichloroethene, and trichloroethylene. The private wells located at the Site were abandoned in accordance with NR 112 and are no longer in use. Presently, no one is drinking contaminated groundwater associated with the Site.

24. In November 1991, an RI Report for the GCOU was completed under the guidance and oversight of U.S. EPA and WDNR. The RI supplied information supporting the conclusion that there is a release of hazardous substances at the Site and provided a determination of the hazardous substances' nature and extent. The RI indicated that the contaminants causing the most concern are VOCs. In general, there are high VOC concentrations in groundwater in and near the Facility. Relatively lower concentrations of VOCs (primarily THF) were detected downgradient of the Site. A THF plume originates from the south section of the Facility and extends downgradient (south) approximately 3600 feet. Elevated levels of VOCs detected in wells near the Facility include THF (630,000 ppb), ethylbenzene (4,400 ppb), toluene (2,700 ppb), and xylenes (37,000 ppb). These levels exceed MCLs and/or State Preventative Action Limits ("PALs") by orders of magnitude.

25. Groundwater contamination at the Site is primarily due to leaching of contaminants from the waste mass and the vadose zone under the waste mass to the groundwater via infiltration of precipitation. The first phase of the cleanup plan at the Hagen Farm Site, referred to as the Source Control Operable Unit, involved capping the landfill and operating an in-situ vapor extraction ("ISVE") unit. The landfill cap is expected to be effective in preventing the leaching of contaminants into the groundwater by preventing the infiltration of precipitation and the ISVE system is a system designed to remove contaminants in the waste mass and vadose zone. VOCs have yet to be detected in private wells determined to be potential receptors. However, at least two private wells appear to be within 500 feet downgradient of the leading edge of the plume. In general, three private wells are located approximately 1000 feet west of the Site and eight private wells are located within 4000 feet downgradient from the Site.

26. Populations at risk include current and future residents using private wells which have been impacted by contaminated groundwater from the Hagen Farm Site. Routes of exposure include ingestion of groundwater and inhalation of volatiles from showering with groundwater. A risk assessment conducted during the RI for Operable Unit No. 2 indicated that the highest risk is from the future ingestion of on-property groundwater, assuming that residential housing would be developed around the Facility.

Under this scenario a carcinogenic risk of 2×10^{-3} and a hazard index ratio of 6,000 were calculated. U.S. EPA considers these risks unacceptable. Drinking groundwater from wells on the property next to the Facility could result in a significant increase in an individual's risk of developing cancer and/or could result in non-cancerous health effects, such as organ impairment due to the toxicity of the contaminants.

27. As provided in CERCLA and the NCP, and based upon the evaluation of the RI/FS and the nine criteria, U.S. EPA, in consultation with the WDNR, selected groundwater extraction and treatment, with discharge of the treated groundwater to either an adjacent wetland or the Yahara River as the groundwater control remedial action at the Hagen Farm Site. The main elements of the groundwater control remedial action as selected in the ROD are as follows: (1) Monitoring of all private wells located around the Site; (2) pre-treatment of extracted on- and off-property groundwater; (3) extraction and treatment of groundwater; (4) treatment of on-property groundwater using Activated Sludge Biological Treatment; (5) treatment of off-property groundwater using a treatment technology to be determined during the design phase; (6) discharge of treated groundwater to adjacent wetlands or the Yahara River; (7) treatment and disposal of sludges generated from the groundwater treatment and treatment of off-gas emitted from the treatment process; (8) deed and access restrictions to prevent installation of drinking water wells

within the vicinity of the disposal areas and off-property; and (9) implementation of a bench scale study to determine the effect of nutrients and/or oxygen on contaminated groundwater. If the bench scale study shows positive results, a pilot study shall be conducted with the ultimate goal of enhancing the selected remedy with an in-situ groundwater bioremediation.

28. The selected remedy will provide adequate protection of human health and the environment. Risks posed by groundwater contamination will be reduced and controlled by the operation of a groundwater extraction and treatment system. Access restrictions will prevent direct contact with contaminated groundwater until groundwater cleanup standards are met. No unacceptable short-term risks will be caused by implementation of the remedy. Standard safety programs, such as fencing, use of protective equipment, monitoring, and off-gas treatment, should mitigate any short-term risks.

29. The Hagen Farm Site is a "facility" as defined in section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

30. Respondent is a "person" as defined in section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

31. Respondent is a liable party as defined in section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is subject to this Order under section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

32. "Hazardous substances" as defined in section 101(14) of CERCLA, 42 U.S.C. § 9601(14) are present at the Site.

33. These hazardous substances are being "released" from the Facility as that term is defined in section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

34. The past disposal and migration of hazardous substances from the Facility constitutes a "release". The potential for future migration of hazardous substances from the Site poses a threat of a "release" as defined in section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

35. The release of one or more hazardous substances from the Facility is or may be presenting an imminent and substantial endangerment to the public health or welfare or the environment.

V. NOTICE TO THE STATE

36. Prior to issuing this Order, EPA notified the State of Wisconsin's Department of Natural Resources, that EPA intended to issue this Order. EPA will consult with the State and the State

will have the opportunity to review and comment to EPA regarding all work to be performed, deliverables, and any other issues which arise while the Order remains in effect.

VI. ORDER

37. Based on the foregoing, Respondent is hereby ordered to comply with all of the provisions of this Order, including but not limited to all Attachments to this Order, all documents incorporated by reference into this Order, and all schedules and deadlines contained in this Order, attached to this Order, or incorporated by reference into this Order.

VII. WORK TO BE PERFORMED

38. Within five (5) days after the effective date of this Order, Respondent shall record Notice of and/or a copy of this Order in the appropriate governmental office where land ownership and transfer records are filed or recorded, and shall ensure that the recording of said notice and/or Order is indexed to the title of each and every parcel of property owned by said Respondent at the Site, so as to provide notice to third parties of the issuance and terms of this Order with respect to those properties. Respondent shall, within 15 days after the effective date of this Order, send notice of such recording and indexing to EPA.

39. All materials removed from the Site shall be disposed of or treated at a facility approved in advance of removal by EPA's RPM and in accordance with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3); with the U.S. EPA "Revised Off-Site Policy," OSWER Directive 9834.11, November 13, 1987; and with all other applicable Federal, State, and local requirements. Prior to any off-site shipment of hazardous substances from the Site to an out-of-state waste management facility, Respondent shall provide written notification to the appropriate state environmental official in the receiving state and to EPA's Remedial Project Manager ("RPM") of such shipment of hazardous substances. However, the notification of shipments to the state shall not apply to any off-Site shipments when the total volume of all shipments from the Site to the state will not exceed ten (10) cubic yards.

a. The notification shall be in writing, and shall include the following information, where available: (1) the name and location of the facility to which the hazardous substances are to be shipped; (2) the type and quantity of the hazardous substances to be shipped; (3) the expected schedule for the shipment of the hazardous substances; and (4) the method of transportation. Respondent shall notify the receiving state of major changes in the shipment plan, such as a decision to ship the hazardous substances to another facility within the same state, or to a facility in another state.

b. All hazardous substances removed from the Facility or vicinity shall be disposed of or treated at a Facility approved by EPA's RPM, and in compliance with the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 9601, et seq., as amended; the EPA Revised Off-Site Policy; and all other applicable Federal, State, and local requirements. The identity of the receiving facility and state will be determined by Respondent following the award of the contract for Remedial Action construction. Respondent shall provide all relevant information, including information under the categories noted in paragraph 44(a) above, on the off-Site shipments as soon as practicable after the award of the contract and before the hazardous substances are actually shipped.

40. Respondent shall cooperate with EPA in providing information regarding the work to the public. When requested by EPA, Respondent shall participate in the preparation of such information for distribution to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

41. All Workplans and deliverables thereunder, as described throughout this Order, shall be submitted to WDNR and U.S. EPA. All Workplans and deliverables will be reviewed and either approved, approved with modifications, or disapproved by EPA, in consultation with WDNR. In the event of approval or approval

with modifications by EPA, Respondent shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA. If the Workplan or other deliverable is approved with modifications or disapproved, EPA will provide, in writing, comments or modifications required for approval. Respondent shall amend the Workplan or other deliverable to incorporate only those comments or modifications required by U.S. EPA. Within thirty (30) days after the date of EPA's written notification of approval with modifications or disapproval, Respondent shall submit an Amended Workplan or other deliverable. EPA shall review the Amended Workplan or deliverable and either approve or disapprove it. Failure to submit a Workplan, Amended Workplan or other deliverable shall constitute noncompliance with this Order. Submission of an Amended Workplan or other deliverable which fails to incorporate all of EPA's required modifications, or which includes other unrequested modifications, shall also constitute noncompliance with this Order. Approval by EPA of the (Amended) Workplan or other deliverable shall cause said approved (Amended) Workplan or other deliverable to be incorporated herein as an enforceable part of this Order. If any (Amended) Workplan or other deliverable is not approved by EPA, Respondent shall be deemed to be in violation of this Order.

A. Remedial Design

42. Within sixty (60) days after the effective date of this Order, Respondent shall submit a workplan for the remedial design at the Site ("Remedial Design Workplan" or "RD Workplan") to EPA

for review and approval. The RD Workplan shall include a detailed step-by-step plan for completing the remedial design for the remedy selected in the ROD, and for attaining and maintaining all requirements and performance standards identified in the ROD and Statement of Work. The RD Workplan must describe in detail the tasks and deliverables Respondent will complete during the remedial design phase, and a schedule for completing the tasks and deliverables in the RD Workplan. The RD Workplan shall be consistent with, and shall provide for implementing the Statement of Work, and shall comport with EPA's "Superfund Remedial Design and Remedial Action Guidance, OSWER Directive 9355.0-4A."

43. Upon approval of the (Amended) RD Workplan by U.S. EPA, Respondent shall implement the (Amended) RD Workplan and submit all design deliverables according to the schedule in the approved (Amended) RD Workplan. Any noncompliance with the approved (Amended) RD Workplan shall be a violation of this Order.

44. Upon EPA approval, the final design is incorporated into this Order as an enforceable part of this Order.

B. Remedial Action

45. As part of the final design, Respondent shall submit a Remedial Action Workplan ("RA Workplan") for review and approval. The RA Workplan shall be developed in accordance with the ROD, and the attached Statement of Work, and shall be consistent with the final design as approved by EPA.

46. Upon approval of the (Amended) RA Workplan by EPA, Respondent shall implement the (Amended) RA Workplan according to the schedules in the (Amended) RA Workplan. Unless otherwise directed by EPA, Respondent shall not commence remedial action at the Site prior to approval of the (Amended) RA Workplan. Any noncompliance with the approved (Amended) RA Workplan shall be a violation of this Order.

47. Notwithstanding any action by EPA or the State, Respondent shall remain fully responsible for achievement of the performance standards in the Record of Decision and Statement of Work. Nothing in this Order, or in EPA's approval of any (amended) work plan or other deliverable, shall be deemed to constitute a warranty or representation of any kind by EPA that full performance of the Remedial Design or Remedial Action will achieve the performance standards set forth in the ROD and in the Statement of Work. Respondent's compliance with such approved documents does not foreclose EPA from seeking additional work to achieve the applicable performance standards.

VIII. ADDITIONAL RESPONSE ACTIONS

48. In the event that EPA, in its sole discretion, determines that additional work or modifications to work are necessary to meet applicable performance standards, or that modifications to work are necessary to maintain consistency with the final remedy,

EPA will notify Respondent that additional response actions are necessary. EPA may also require Respondent to modify any plan, design, or other deliverable required by this Order, including any approved modifications.

49. Within sixty (60) days after receipt of notice from EPA that additional response activities are necessary, Respondent shall submit for approval an Additional RD/RA Workplan pursuant to paragraph 34 herein. The Additional RD/RA Workplan shall conform to this Order's applicable requirements for RD and RA Workplans. Upon EPA's approval of the (Amended) Additional RD/RA Workplan, the (Amended) Additional RD/RA Workplan shall become an enforceable part of this Order, and Respondent shall implement the (Amended) Additional RD/RA Workplan for additional response activities in accordance with the standards, specifications, and schedule contained therein. Failure to submit an Additional Workplan shall constitute noncompliance with this Order.

50. Within thirty (30) days after Respondent concludes that the Remedial Action has been fully performed, Respondent shall so notify EPA and shall schedule and conduct a pre-certification inspection to be attended by Respondent and EPA. The pre-certification inspection shall be followed by a written report submitted within thirty (30) days after the inspection by a registered professional engineer and Respondent's Project Coordinator certifying that the Remedial Action has been

completed in full satisfaction of the requirements of this Order. If, after completion of the pre-certification inspection and receipt and review of the written report, EPA determines that the Remedial Action or any portion thereof has not been completed in accordance with this Order, EPA shall notify Respondent in writing of the activities that must be undertaken to complete the Remedial Action and shall set forth in the notice a schedule for performance of such activities. Respondent shall perform all activities described in the notice in accordance with the specifications and schedules established therein. If EPA concludes, following the initial or any subsequent certification of completion by Respondent that the Remedial Action has been fully performed in accordance with this Order, EPA may notify Respondent that the Remedial Action has been fully performed. EPA's notification shall be based on present knowledge and Respondent's certification to EPA, and shall not limit EPA's right to perform periodic reviews pursuant to section 121(c) of CERCLA, 42 U.S.C. § 9621(c), or to take or require any action that in the judgment of EPA is appropriate at the Site, in accordance with 42 U.S.C. §§ 9604, 9606, or 9607.

IX. EPA PERIODIC REVIEW

51. Under section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and any applicable regulations, EPA may review the Site to assure that the work performed pursuant to this Order adequately protects

human health and the environment. Until such time as EPA certifies completion of the work, Respondent shall conduct the requisite studies, investigations, or other response actions as determined necessary by EPA in order to permit EPA to conduct the review under section 121(c) of CERCLA. As a result of any review performed under this paragraph, Respondent may be required to perform additional Work or to modify work previously performed.

X. ENDANGERMENT AND EMERGENCY RESPONSE

52. In the event of any event during the performance of the work which causes or threatens to cause a release of a hazardous substance or which may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action to prevent, abate, or minimize the threat, and shall immediately notify EPA's RPM or alternate RPM. If neither of these persons is available Respondent shall notify the EPA Emergency Response Section, Region V. Respondent shall take further action in consultation with EPA's RPM and in accordance with all applicable provisions of this Order, including but not limited to the Health and Safety Plan and the Contingency Plan. In the event that Respondent fails to take appropriate response action as required by this paragraph, and EPA takes that action instead, Respondent shall reimburse EPA for all costs of the response action not inconsistent with the NCP. Respondent shall pay the response

costs in the manner described in Section XX of this Order, within thirty (30) days after EPA's demand for payment.

53. Nothing in the preceding paragraph shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances on, at, or from the Site.

XI. PROGRESS REPORTS

54. In addition to the other deliverables set forth in this Order, Respondent shall provide monthly progress reports to EPA with respect to actions and activities undertaken pursuant to this Order. The progress reports shall be submitted on or before the tenth day of each month following the effective date of this Order. Respondent's obligation to submit progress reports continues until EPA gives Respondent written notice under paragraph 92 of this Order. At a minimum these progress reports shall: (1) describe the actions which have been taken to comply with this Order during the prior month; (2) include all results of sampling and tests and all other data received by Respondent and not previously submitted to EPA; (3) describe all work planned for the next 90-days with schedules relating such work to the overall project schedule for RD/RA completion; and (4) describe all problems encountered and any anticipated problems,

any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays.

XII. QUALITY ASSURANCE, SAMPLING AND DATA ANALYSIS

55. Respondent shall use the quality assurance, quality control, and chain of custody procedures described in the "EPA NEIC Policies and Procedures Manual," May 1978, revised May 1986, EPA-330/9-78-001-R; EPA's "Guidelines and Specifications for Preparing Quality Assurance Program Documentation," June 1, 1987; EPA's "Data Quality Objective Guidance," (EPA/540/G87/003 and 004), and any amendments to these documents, while conducting all sample collection and analysis activities required herein by any plan. To provide quality assurance and maintain quality control, Respondent shall:

a. Prior to the commencement of any sampling and analysis under this Order, Respondent shall submit a Quality Assurance Project Plan ("QAPP") to the U.S. EPA that is consistent with the SOW, the Amended Workplan, and EPA's "Interim Guidelines and Specifications For Preparing Quality Assurance Project Plans" (QAM-005/80) and any subsequent amendments.

b. Prior to the development and submittal of a QAPP, Respondent shall attend a pre-QAPP meeting sponsored by EPA to identify all monitoring and data quality objectives. U.S. EPA, after review of the submitted QAPP, will either approve, conditionally approve, or disapprove the QAPP. Upon notification of conditional or disapproval, Respondent shall make all required modifications to the QAPP within twenty-one (21) days of receipt of such notification.

c. Use only laboratories which have a documented Quality Assurance Program that complies with EPA guidance document QAMS-005/80 and subsequent amendments.

d. Ensure that the laboratory used by the Respondent for analyses, performs according to a method or methods deemed satisfactory to EPA and submits all protocols to be used for analyses to EPA at least 30 days before beginning analysis.

e. Ensure that EPA personnel and EPA's authorized representatives are allowed access to the laboratory and personnel utilized by the Respondent for analyses.

56. Respondent shall notify EPA not less than fourteen (14) days in advance of any sample collection activity. At the request of EPA, Respondent shall allow split or duplicate samples to be taken by EPA or its authorized representatives, of any samples

collected by Respondent with regard to the Site or pursuant to the implementation of this Order. In addition, EPA shall have the right to take any additional samples that EPA deems necessary.

XIII. COMPLIANCE WITH APPLICABLE LAWS

57. All activities by Respondent pursuant to this Order shall be performed in accordance with the requirements of all Federal and State laws and regulations. EPA has determined that the activities contemplated by this Order are consistent with the National Contingency Plan ("NCP").

58. Except as provided in section 121(e) of CERCLA and the NCP, no permit shall be required for any portion of the Work conducted entirely on-Site. Where any portion of the Work requires a Federal or State permit, Respondent shall submit timely applications and take all other actions necessary to obtain and to comply with all such permits or approvals.

59. This Order is not, and shall not be construed to be, a permit issued pursuant to any Federal or State statute or regulation.

XIV. REMEDIAL PROJECT MANAGER

60. All communications, whether written or oral, from Respondent to EPA shall be directed to EPA's Remedial Project Manager.

Respondent shall submit to EPA ten (10) copies of all documents, including plans, reports, and other correspondence, which are developed pursuant to this Order, and shall send these documents by specify certified mail, return receipt requested.

EPA's Remedial Project Manager is:

Steven J. Padovani
Remedial Project Manager
Mail Code HSRW-6J
77 W. Jackson Boulevard
Chicago, Illinois 60604

EPA's Alternate Remedial Project Manager is:

Mary Pat Tyson, Chief
Michigan/Wisconsin Section II
Mail Code HSRW-6J
77 W. Jackson Boulevard
Chicago, Illinois 60604

61. EPA may change its Remedial Project Manager or Alternate Remedial Project Manager. If EPA changes its Remedial Project Manager or Alternate Remedial Project Manager, EPA will inform Respondent in writing of the name, address, and telephone number of the new Remedial Project Manager or Alternate Remedial Project Manager.

62. EPA's RPM and Alternate RPM shall have the authority lawfully vested in a Remedial Project Manager ("RPM") and On-Scene Coordinator ("OSC") by the National Contingency Plan, 40

C.F.R. Part 300. EPA's RPM or Alternate RPM shall have authority, consistent with the National Contingency Plan, to halt any work required by this Order, and to take any necessary response action.

XV. PROJECT COORDINATOR AND CONTRACTORS

63. All aspects of the Work to be performed by Respondent pursuant to this Order shall be under the direction and supervision of a Project Coordinator qualified to undertake and complete the requirements of this Order. The Project Coordinator shall be the RPM's primary point of contact with the Respondent and shall possess sufficient technical expertise regarding all aspects of the Work. Within fifteen (15) days after the effective date of this Order, Respondent shall notify EPA in writing of the name and qualifications of the Project Coordinator, including primary support entities and staff, proposed to be used in carrying out Work under this Order.

64. Within thirty (30) days after EPA approves the RA Workplan, Respondent shall identify a proposed construction contractor and notify EPA in writing of the name, title, and qualifications of the construction contractor proposed to be used in carrying out work under this Order. EPA reserves the right to disapprove the proposed construction contractor. In the event that EPA disapproves the proposed construction contractor, Respondent

shall submit the name, title and qualifications of a new proposed contractor within fifteen (15) days of EPA's disapproval of the contractor previously proposed.

65. Respondent shall submit a copy of the construction contractor solicitation documents to EPA not later than five (5) days after publishing the solicitation documents. Upon EPA's written request, Respondent shall submit complete copies of all bid packages received from all contract bidders when Respondent notifies EPA of the identity of the proposed construction contractor.

66. At least seven (7) days prior to commencing any work at the Site pursuant to this Order, Respondent shall submit to EPA a certification that Respondent or its contractors and subcontractors have adequate insurance coverage or have indemnification for liabilities for injuries or damages to persons or property which may result from the activities to be conducted by or on behalf of Respondent pursuant to this Order. Respondent shall ensure that such insurance or indemnification is maintained for the duration of the Work required by this Order.

67. EPA retains the right to disapprove of the Project Coordinator and any contractor, including but not limited to remedial design contractors and construction contractors retained by the Respondent. In the event EPA disapproves a Project

Coordinator or contractor, Respondent shall retain a new project coordinator or contractor to perform the work, and such selection shall be made within fifteen (15) days following the date of EPA's disapproval. If at any time Respondent propose to use a new project coordinator or contractor, Respondent shall notify EPA of the identity of the new project coordinator or contractor at least fifteen (15) days before the new project coordinator or contractor performs any work under this Order.

XVI. SITE ACCESS AND DOCUMENT AVAILABILITY

68. In the event that the Site, the off-Site area that is to be used for access, property where documents required to be prepared or maintained by this Order are located, or other property subject to or affected by this response action, is owned in whole or in part by parties other than those bound by this Order, Respondent will obtain, or use its best efforts to obtain, site access agreements from the present owner(s) within sixty (60) days after the effective date of this Order. Said agreements shall provide access for EPA, its contractors and oversight officials, the State and its contractors, and Respondent or Respondent's authorized representatives and contractors. Said agreements shall specify that Respondent is not EPA's representative with respect to liability associated with Site activities. Copies of such agreements shall be provided to EPA prior to Respondent's initiation of field activities.

Respondent's best efforts shall include providing reasonable compensation to any off-Site property owner. If access agreements are not obtained within the time referenced above, Respondent shall immediately notify EPA of its failure to obtain access.

69. If Respondent cannot obtain the necessary access agreements, EPA may exercise non-reviewable discretion and; (1) use its legal authorities to obtain access for the Respondent(s); (2) conduct response actions at the property in question; or (3) terminate this Order. If EPA conducts a response action and does not terminate the Order, Respondent shall perform all other activities not requiring access to that property. Respondent shall integrate the results of any such tasks undertaken by EPA into its reports and deliverables. Respondent shall reimburse EPA, pursuant to Section XX of this Order, for all response costs (including attorney fees) incurred by the United States to obtain access for Respondent.

70. Respondent shall allow EPA and its authorized representatives and contractors to enter and freely move about all property at the Site and off-Site areas subject to or affected by the Work under this Order or where documents required to be prepared or maintained by this Order are located, for the purposes of inspecting conditions, activities, the results of activities, records, operating logs, and contracts related to the

Site or Respondent and its representatives or contractors pursuant to this Order; reviewing the progress of the Respondent in carrying out the terms of this Order; conducting tests as EPA or its authorized representatives or contractors deem necessary; using a camera, sound recording device or other documentary type equipment; and verifying the data submitted to EPA by Respondent. Respondent shall allow EPA and its authorized representatives to enter the Site, to inspect and copy all records, files, photographs, documents, sampling and monitoring data, and other writings related to work undertaken in carrying out this Order. Nothing herein shall limit EPA's right of entry or inspection authority under Federal law.

XVII. RECORD PRESERVATION

71. On or before the effective date of this Order, Respondent shall submit a written certification to EPA that they have not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to their potential liability with regard to the Site since the time of their notification of potential liability by EPA or the State. Respondent shall not dispose of any such documents without prior approval by EPA. Upon EPA's request, Respondent shall make all such documents available to EPA.

72. Respondent shall provide to EPA upon request, copies of all documents and information within their possession or control or that of any of their contractors or agents relating to activities at the Site or to the implementation of this Order, including but not limited to sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information. Respondent shall also make available to EPA for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

73. Until ten (10) years after EPA provides notice pursuant to paragraph 92 of this Order, Respondent shall preserve, and shall instruct their contractors and agents to preserve, all documents, records, and information of whatever kind, nature or description relating to the performance of the Work. Upon the conclusion of this document retention period, Respondent shall notify the United States at least ninety (90) days prior to the destruction of any such records, documents or information, and, upon request of the United States, Respondent shall deliver all such documents, records and information to EPA.

74. Respondent may assert a claim of business confidentiality covering part or all of the information submitted to EPA pursuant to the terms of this Order under 40 C.F.R. § 2.203, provided such

claim is not inconsistent with section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7) or other provisions of law. This claim shall be asserted in the manner described by 40 C.F.R. § 2.203(b) and substantiated by Respondent at the time the claim is made.

Information determined to be confidential by EPA will be given the protection specified in 40 C.F.R. Part 2. If no such claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA or the state without further notice to the Respondent. Respondent shall not assert confidentiality claims with respect to any data or documents related to Site conditions, sampling, or monitoring.

75. Respondent shall maintain, for the period during which this Order is in effect, an index of documents that Respondent claims contain confidential business information. The index shall contain, for each document, the date, author, addressee, and subject of the document. Upon written request from EPA, Respondent shall submit a copy of the index to EPA.

XVIII. DELAY IN PERFORMANCE

76. Any delay in performance of this Order that, in EPA's judgment, is not properly justified by Respondent under the terms of this section shall be considered a violation of this Order. Any delay in performance of this Order shall not affect

Respondent's obligation to fully perform all obligations under the terms and conditions of this Order.

77. Respondent shall notify EPA of any delay or anticipated delay in performing any requirement of this Order. Such notification shall be made by telephone to EPA's RPM or Alternate RPM within forty eight (48) hours after Respondent first knows or should have known that a delay might occur. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Within seven (7) days after notifying EPA by telephone, Respondent shall provide written notification fully describing the nature of the delay, any justification for delay, any reason why Respondent should not be held strictly accountable for failing to comply with any relevant requirements of this Order, the measures planned and taken to minimize the delay, and a schedule for implementing the measures that will be taken to mitigate the effect of the delay. Increased costs or expenses associated with implementation of the activities called for in this Order is not a justification for any delay in performance.

XIX. ASSURANCE OF ABILITY TO COMPLETE WORK

78. Respondent shall demonstrate its ability to complete the Work required by this Order and to pay all claims that arise from the performance of the Work by obtaining and presenting to EPA within thirty (30) days after approval of the RD Workplan, one of

the following: (1) a performance bond; (2) a letter of credit; (3) a guarantee by a third party; or (4) internal financial information to allow EPA to determine that Respondent has sufficient assets available to perform the Work. Respondent shall demonstrate financial assurance in an amount no less than the estimate of cost for the remedial design and remedial action contained in the Record of Decision for the Site. If Respondent seeks to demonstrate ability to complete the remedial action by means of internal financial information, or by guarantee of a third party, they shall re-submit such information annually, on the anniversary of the effective date of this Order. If EPA determines that such financial information is inadequate, Respondent shall, within thirty (30) days after receipt of EPA's notice of determination, obtain and present to EPA for approval one of the other three forms of financial assurance listed above.

XX. REIMBURSEMENT OF RESPONSE COSTS

79. Respondent shall reimburse EPA, upon written demand, for all response costs incurred by the United States in overseeing Respondent's implementation of the requirements of this Order. EPA may submit to Respondent on a periodic basis an accounting of all oversight response costs incurred by the United States with respect to this Order. EPA's Itemized Cost Summary Reports, or such other summary as may be certified by EPA, shall serve as the basis for payment demands.

80. Respondent shall, within thirty (30) days after receipt of each EPA accounting, remit a certified or cashier's check for the amount of those costs. Interest shall accrue from the later of the date that payment of a specified amount is demanded in writing or the date of the expenditure. The interest rate is the rate established by the Department of the Treasury pursuant to 31 U.S.C. § 3717 and 4 C.F.R. § 102.13.

81. Checks shall be made payable to the "U.S. EPA Hazardous Substances Superfund" and shall include the name of the Site, the Site identification number, the account number and the title of this Order. Checks shall be forwarded to:

U.S. Environmental Protection Agency
Superfund Accounting
P.O. Box 70753
Chicago, Illinois 60604

Respondent shall send copies of each transmittal letter and check to the EPA's RPM.

XXI. UNITED STATES NOT LIABLE

82. The United States and EPA are not to be construed as parties to, and do not assume any liability for, any contract entered into by the Respondent to carry out the activities pursuant to this Order. The proper completion of the Work under this Order is solely the responsibility of the Respondent. The United States and EPA, by issuance of this Order, also assume no liability for any injuries or damages to persons or property

resulting from acts or omissions by Respondent, or its directors, officers, employees, agents, representatives, successors, assigns, contractors, or consultants in carrying out any action or activity required by this Order.

XXII. ENFORCEMENT AND RESERVATIONS

83. EPA reserves the right to bring an action against Respondent under section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States related to this Order and not reimbursed by Respondent. This reservation shall include but not be limited to past costs, direct costs, indirect costs, the costs of oversight, the costs of compiling the cost documentation to support oversight cost demand, as well as accrued interest as provided in section 107(a) of CERCLA.

84. Notwithstanding any other provision of this Order, at any time during the response action, EPA may perform its own studies, complete the response action (or any portion of the response action) as provided in CERCLA and the NCP, and seek reimbursement from Respondent for its costs, or seek any other appropriate relief.

85. Nothing in this Order shall preclude EPA from taking any additional enforcement actions, including modification of this Order or issuance of additional Orders, and/or additional

remedial or removal actions as EPA may deem necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA, 42 U.S.C. § 9606(a), et seq., or any other applicable law. This Order shall not affect Respondent's liability under CERCLA section 107(a), 42 U.S.C. § 9607(a), for the costs of any such additional actions.

86. Notwithstanding any provision of this Order, the United States hereby retains all of its information gathering, inspection, and enforcement authorities and rights under CERCLA, RCRA, and any other applicable statutes or regulations.

87. Respondent shall be subject to civil penalties under section 106(b) of CERCLA, 42 U.S.C. § 9606(b), of not more than \$25,000 for each day in which Respondent violates, or fails or refuses to comply with this Order without cause. In addition, failure to properly provide response action under this Order, or any portion hereof, without sufficient cause, may result in liability under section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), for punitive damages in an amount at least equal to, and not more than three times the amount of any costs incurred by the Fund as a result of such failure to take proper action.

88. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action, or demand in law or

equity against any person for any liability it may have arising out of or relating in any way to the Site.

89. If a court issues an order that invalidates any provision of this Order or finds that Respondent has sufficient cause not to comply with one or more provisions of this Order, Respondent shall remain bound to comply with all provisions of this Order not invalidated by the court's order.

XXIII. ACCESS TO ADMINISTRATIVE RECORD

90. The Section 106 Administrative Record is available for review on normal business days between the hours of 9:00 a.m. and 5:00 p.m. at the U.S. EPA, Region V, 77 West Jackson Boulevard Chicago, Illinois. An Index of the Administrative Record is attached hereto as Appendix 1.

XXIV. NOTICE OF INTENT TO COMPLY

91. On or before the effective date of this Order, Respondent must submit to EPA written notice stating its unequivocal intention to comply with all terms of this Order. Respondent's written notice shall describe, using facts that exist on or prior to the effective date of this Order, any "sufficient cause" defenses asserted by Respondent under sections 106(b) and 107(c)(3) of CERCLA. The absence of a response by EPA to the

notice required by this paragraph shall not be deemed to be acceptance of Respondent's assertions. In the event Respondent fails to provide such written notice, then Respondent shall be deemed to have failed to comply with this Order.

XXV. EFFECTIVE DATE AND TERMINATION

92. This Order shall become effective thirty (30) days after the date of signature.

93. Within thirty (30) days after Respondent concludes that all phases of the Work have been fully performed, that the Performance Standards have been attained, and that all Operation and Maintenance activities have been completed, Respondent shall submit to EPA a written report by a registered professional engineer certifying that the Work has been completed in full satisfaction of the requirements of this Order. EPA shall require such additional activities as may be necessary to complete the Work or EPA may, based upon present knowledge and Respondent's certification to EPA, issue written notification to Respondent that the Work has been completed, as appropriate, in accordance with the procedures set forth in Paragraph 41 for Respondent's certification of completion of the Remedial Action. EPA's notification shall not limit EPA's right to perform periodic reviews pursuant to section 121(c) of CERCLA, 42 U.S.C. § 9621(c), or to take or require any action that in the judgment

of EPA is appropriate at the Site, in accordance with 42 U.S.C. §§ 9604, 9606, or 9607.85. The provisions of this Order shall be deemed to be satisfied when EPA notifies Respondent in writing that Respondent has demonstrated, to U.S. EPA's satisfaction, that all terms of the Order have been completed. This notice shall not, however, terminate Respondent's obligation to comply with paragraph 73 of this Order (relating to record preservation).

XXVI. OPPORTUNITY TO CONFER

94. Respondent may, within ten (10) days after the date this Order is signed, request a conference with the EPA to discuss this Order. If requested, the conference shall occur on December 18, 1992, at 77 West Jackson Boulevard, Chicago, Illinois, 60604.

95. The purpose and scope of the conference shall be limited to issues involving the implementation of the response actions required by this Order and the extent to which Respondent intends to comply with this Order. This conference is not an evidentiary hearing, and does not constitute a proceeding to challenge this Order. It does not give Respondent a right to seek review of this Order, or to seek resolution of potential liability. No record of the conference (e.g. stenographic, tape or other physical record) will be made. At any conference held pursuant to Respondent's request, Respondent may appear in person or by an

attorney or other representative. Requests for a conference must be by telephone followed by written confirmation to EPA's RPM.

So Ordered, this 25th day of November, 1992.

BY:

Director, Waste Management Division

U.S. Environmental Protection Agency, Region V

